IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 465 of 1994
with
CIVIL APPLICATION NO.2339 OF 1994
in
SPECIAL CIVIL APPLICATIONNo 12701 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

FCI

Versus

GANDHIDHAM MUNCIPALITY

Appearance:

1. LETTERS PATENT APPEAL No. 465 of 1994

Mr.N.K.Pahwa for MR PM THAKKAR for Appellant

MS KJ BRAHMBHATT for Respondent

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE JAYANT PATEL

Date of decision: 09/01/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE JAYANT PATEL)

The present appeal is preferred against the order, dated 17.8.1994 passed by the learned single Judge of this court (Coram: A.P.Ravani,J) in Special Civil Application No.12701/93 whereby the petition came to be rejected. The Division Bench of this court had admitted this appeal on 24.11.1994 and it is reported to us that pending this appeal the appellant-Corporation has continued to pay the municipal taxes to the respondent-Corporation.

2. On behalf of the appellant-Corporation Mr.N.K.Pahwa for Mr.Mr.P.M.Thakkar raised the contention that the Food Corporation of India, being an instrumentality of the State Government, is not liable to pay municipal taxes in view of Article 285 of the Constitution. This contention, in substance, is that the land was originally owned by Government of India and the said land is given to the appellant-Corporation for the purpose of construction of godowns and the appellant-Corporation is a statutory corporation, no doubt, is owned by Government of India and therefore in view of Section 99 of the Gujarat Municipalities Act read with Article 285 of the Constitution no tax can be levied upon the property constructed by the appellant-Corporation.

3. Another contention raised by Mr.Pahwa is that since in respect of the some part of the property they are holding the land allotted by Kandla Port Trust, and the tenure of the land is on leave and licence basis, and each tenure of the licence has not exceeded 11 months and, therefore, in view of Section 113 of Gujarat Municipalities Act, more particularly, in view of subsection (2) of the said section, the primary liability to pay tax is upon the owner of the land, i.e. Kandla Port Trust and, not the occupier of the land and building, i.e. the appellant-Corporation.

4. The third contention raised by Mr.Pahwa is that since the subject matter of the appeal pertains to the question of levying municipal tax by the Municipality from the Corporation of Government of India, the matter should be referred to High Power Committee as observed by the Honourable Supreme Court in the case OIL & NATURAL GAS COMMISSION vs COLLECTOR OF CENTRAL EXCISE reported in 1995 Supp (4) SCC 541.

5. We have considered the submissions made by both

the sides and also gone through the order passed by the learned single Judge. It will not be out of place to mention that the substantial question involved in this appeal is now settled by the Honourable Supreme Court in the case of FOOD C9ORPORATION OF INDIA. vs MUNICIPAL COMMITTEE, JALALABAD reported in AIR 1999 SC 2573 wherein the Honourable Supreme Court had considered the identical question and in para 7 of its judgment it was held as under:

> "The question that arises before us is: If the property of the Corporation is property of the Union of India and, thus, exempt from taxation, imposed by the State or any authority within a State. Authority in the present case would include local authority. A Constitution Bench of this court in Electronics Corporation of India Ltd vs Secretary, Revenue Department, Govt.of Andhra Pradesh (1999) 4 SCC 458 = (1999) 3 Scale 123: (AIR 1999 SC 1734 : 1999 AIR SCW 1367) has held that a Government company is distinct from the Central Government and can not claim exemption from taxation under Article 285 of the Constitution. The case of the Corporation can not be any different.The Act under which is constituted specifically makes the Corporation a body corporate having the attributes of a company."

Further in para 11 of its judgment the Honourable

Supreme Court has observed as under:

> "even if the Corporation is an agency or instrumentality of the Central Government, that did not lead to the inference that the Corporation is a Government department. The reason is that Act has given the Corporation an individuality apart from that of the Government."

6. In the above view of the matter, the law on the question is already settled by the Honourable Supreme Court and, therefore, the first contention of Mr.Pahwa that in view of Article 285 of the Constitution the Municipality can not levy or collect taxes on the property of the Corporation has got to be rejected.

7. As regards the second contention of Mr.Pahwa, if we read section 113(2) of Gujarat Municipalities Act,

1963, it says that how and in what manner the liability shall be to pay the tax in a case where land has been let for any term exceeding one year to the tenant. We are unable to accept the reverse interpretation sought to be canvassed by Mr.Pahwa as in a case where the property is let for a period of less than one year, the liability to pay tax shall be on the original owner and not on the tenant or occupier. We can not forget the whole scheme of the Act that it is the occupier of the property who is using the property and for the said purpose the occupier can not get away from the liability to pay the tax of the local authority since these taxes are for the purpose of providing services to the residents or occupiers of the property. Therefore, the second contention of Mr.Pahwa that because the property held by them was on leave and licence basis they are not liable to pay the municipal taxes also deserves to be rejected.

8. As regards the third contention of Mr.Pahwa about referring the dispute to High Power Committee, it will not be out of place to mention that we find that the appellant-Corporation is not entitled to benefit of Article 285 of the Constitution, more particularly, in view of the fact that the law is already settled by the Honourable Supreme Court in the case of FCI (supra). When there is dispute between the appellant-Corporation and the local authority which is a Municipal Committee, we are unable to accept the submission that such dispute should be referred to a High Power Committee. It will also not be out of place to mention that the judgment upon which the reliance is placed, i.e. Oil and Natural Gas Commission(supra), was a case pertaining to Corporation of Govt.of India and Govt.of India and we find that such principle or analogy or the course can not be derived or extended to disputes against Municipalities. Therefore also, we are unable to accept the third contention of Mr.Pahwa regarding referring the matter to the High Power Committee.

9. No other contention is advanced and we find that the judgment and order passed by the learned single judge is perfectly legal and valid. Therefore, there is no substance in this appeal and this appeal deserves to be dismissed and is dismissed accordingly with no order as to costs.

10. As the main appeal is dismissed the Civil Application No.2339/94 stands rejected. Notice is discharged. Interim relief, if any, granted earlier stands vacated. There shall be no order as to costs.

9.1.2002 (B.C.PATEL,J) (JAYANT PATEL,J)